LE COPY

Office-Supreme Court,
FILED
JAN 8 1954
HAROLD B. WILLEY, Cl

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1953

No. 435

A. ELWOOD NORTH,

PETITIONER,

vs.

THE STATE OF FLORIDA,

RESPONDENT

BRIEF IN BEHALF OF THE RESPONDENT

RICHARD W. ERVIN
Attorney General
State of Florida
Tallahassee, Florida

REEVES BOWEN
Assistant Attorney General
Tallahassee, Florida

BART L. COHEN
Assistant Attorney General
Tallahassee, Florida

Attorneys for Respondent

INDEX

Subject Index

	Page
QUESTION PRESENTED	1-2
STATEMENT OF THE CASE	2-9
ARGUMENT	
As to Point One, Concerning Preacher Jones and the Jury	10-14
As to Point Two, Concerning the Alleged Bias of Juror Bloodworth	14-17
As to Point Three, Concerning the Newspaper Article	17-19
CONCLUSION	19

Table of Authorities

Cases Cited:

Chilton v. Commonwealth, Ken., 186 S.W. 191	12
Crosby v. State, 90 Fla. 381, 106 So. 741	16
Feiner v. New York, 340 U.S. 315	17
Irvin v. State, 19 Fla. 872	15
Lamb v. State, 90 Fla. 844, 107 So. 530	15
Lisenba v. California, 314 U.S. 219, 86 L. ed. 166	18
Morgan v. U.S. (C.C.A. 7th) 31 F.2d 385	12
Niemotko v. Maryland, 340 U.S. 268	17
Shaw v. State, Ga., 9 S.E. 768	10
State v. Kinsauls, N.C., 36 S.E. 31	11
State v. Pancoast, N.D., 67 N.W. 1052	12

Texts:

22 A.L.R. 254	10
62 A.L.R. 1466	10

Statutes:

Sec. 911.03 Florida Statutes	18
Sec. 916.03 Florida Statutes	18

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 435

A. ELWOOD NORTH,
PETITIONER,

vs.

THE STATE OF FLORIDA,
RESPONDENT

BRIEF IN BEHALF OF THE RESPONDENT

QUESTIONS PRESENTED

(The petitioner presents what he deems to be certain questions raised by the record in this cause. It is our contention that these questions fall completely wide of the mark from a factual as well as a legal standpoint. We shall not, however, attempt to reshape the questions for we fully believe that there is no question before this Court upon which this Court should reverse the Courts below. We shall exhibit in our Statement of the Case and in our Argument just wherein the record fails to support the factual statements made by the petitioner.)

Was the petitioner denied a fair and impartial trial conducted in accordance with the procedural safeguards guaranteed by the Due Process Clause of the Fourteenth Amendment when

(1) a religious evangelist was permitted to meet secretly with the jury on two separate occasions during the course of the trial, to address the jury in a manner prejudicial to the petitioner, and to give the jury "divine guidance" against recommending mercy for the petitioner if they found he was guilty;

(2) one of the jurors who brought in a verdict of guilty without recommendation of mercy had already formed a fixed opinion that the petitioner was guilty prior to the trial, which opinion he had repeatedly expressed before the trial, contrary to his testimony on voir dire examination; and

(3) the trial of petitioner was conducted in an atmosphere of passion and prejudice as a consequence of the trial Court's denial of petitioner's motion for a continuance which motion was made after widespread and inflammatory publicity had made it impossible to secure an impartial jury at that time?

STATEMENT OF THE CASE

With regard to the three questions presented in the petition and brief in support thereof we should like to clarify and correct certain material points. On page 5 of the petition petitioner states "without disputing the factual allegations of the motion the trial court summarily denied it (R. 51)." A reading of the order which extends from page 251 in the record to page 253 of the record shows clearly that the trial court did much more than summarily deny a continuance. The trial court pointed out that it did not appear whether or not any of the prospective jurors or tentative jurors had read the complained of issue of the Tampa Tribune and, further, that the panel was still open for re-examination of each

and every individual juror tentatively seated. The court went on to state "If it appears that any juror does not qualify to the satisfaction of counsel for defendant with regard to any influence or any inerasable impression upon such juror made by this article of the *Tribune*, the Court will excuse such juror for cause from sitting in this case. Every juror tentatively in the box might possibly be excused for cause if it is shown that because of this article he might be influenced to the very least degree in making or bringing in a verdict in the case."

Thereupon one of the jurors who had been tentatively seated the day before was questioned by defense counsel and was excused for cause (R. 253, 254).

Another prospective juror (Albritton) then was questioned. The State Attorney asked the jurors in the box the following question: "In your frame of mind this morning, can you stand fairly and impartially as between the State of Florida and the defendant if accepted upon this jury?" (R. 254). Each juror indicated that he could except one, Hooker, who was promptly excused. (R. 254-255).

Thereafter, the selection of the jury proceeded until an impartial jury of twelve was accepted by both sides. The appellant resolutely and completely abstained from availing himself of the opportunity thus afforded him by the judge; he did not interrogate the jurors about said newspaper article (R. 253-326).

Further along in the petitioner's alleged statement of the case he gets into a good deal of inference and argument which does not reflect what really occurred with regard to Reverend Jones as the record demonstrates.

At the hearing on the motion for a new trial the bailiff Johnson testified (and the question asked him by defense counsel impliedly conceded) that the court authorized a bailiff to take the jurors to church when all of them requested it; and that this permission was given in the presence of defense counsel. (R. 1485-1486). No claim was made by the petitioner that he or his counsel objected to giving such permission.

The jurors couldn't agree as to what church to attend; so they compromised by agreeing to ask a preacher to grace the table for them (R. 1475).

The preacher met with the jury twice, once on Sunday morning and once on Wednesday morning before the case went to the jury (R. 1517).

The preacher stayed with the jury three minutes and twenty seconds the first time, and three minutes and forty seconds the second time. The bailiff timed him with a stop watch. (R. 1488).

The preacher, Jones, was eating breakfast in the cafe where the jurors were also eating in a private room. The juror Grigsby recognized him and asked the bailiff to call him over to bless the table. (R. 1493-1494). [Grigsby was a Methodist (R. 1492) and Preacher Jones was a Baptist (R. 1502). Grigsby had seen Jones twice, at revivals conducted by Jones in a Baptist Church sometime before. There were two revivals and Grigsby had attended each of them one time. Grigsby had never met Jones personally and had not had any close contact with him. (R. 1493-1501-1502).]

The preacher came into the closed restaurant room

where the jurors were eating (R. 1519-1520). The bailiff was present at all times (R. 1488).

The preacher did not mention anything in the case or which represented the case (R. 1488). He didn't discuss the case in any way and didn't refer to it directly or indirectly (R. 1513-1514).

The preacher read from the Bible and graced the table with a prayer (R. 1473-1474).

The jurors were generally agreed that the preacher read from the Psalms. However, the juror Gibson pinned it down to a closer point. Gibson testified that the first time, Sunday, the preacher read a verse from Proverbs, Gibson being unable to recall just what it was and that the second time (which was Wednesday) the preacher read from the 37th Psalm and stressed the fifth verse out of context. Gibson said that nothing that the preacher read or said was in any way connected with the North case or with the jurors' duty in connection with the case (R. 1518).

The preacher didn't talk with any of the jurors at all (R. 1494).

The bailiff (who was present at all times) testified that the preacher didn't read or say anything about the duties or tasks that lay ahead of the jurors (R. 1489-1490); and that the preacher never mentioned a word about the jurors or anybody in person (R. 1489). And juror Beamon also testified that the preacher didn't say anything about a juror; that juror wasn't mentioned. (R. 1527). And juror Bloodworth testified that the preacher said nothing about their duties as jurors. (R. 1533-1534).

On the other hand juror Bryan testified that the

BLEED THROUGH POOR COPY

preacher prayed. "God give these men your divine guidance in their duties" (R. 1478). And juror Gibson also testified that the preacher asked for divine guidance. (R. 1519).

The statement of the case in the petition also somewhat twists the situation with regard to the alleged bias of one of the jurors.

The petitioner's motion for new trial alleged that, prior to the trial, juror Bloodworth had formed an expressed and fixed opinion that the petitioner was guilty, and that Bloodworth had that fixed opinion when accepted upon the jury; and that, upon voir dire, he testified that he had never formed or expressed any opinion as to the petitioner's guilt or innocence. (R. 1294-1295).

The State traversed the allegations of said motion (R. 1309). A hearing was had at which testimony was introduced for and against said allegations concerning the juror Bloodworth.

After hearing and considering said testimony the trial judge denied the motion. Such denial necessarily operated as a finding that the petitioner had not carried his burden of proving the allegations as to Bloodworth.

The petitioner's witness Bost testified that, after the petitioner was arrested but before he was indicted, he, Bost, was in the barber shop where Bloodworth was employed as a barber and overheard a conversation in which Bloodworth said that in his mind the petitioner was guilty and that it would take more argument than he could see to change it. (R. 1319-1321). Although Bost partly followed the case in the newspapers and noted that Bloodworth was listed as a prospective juryman in the case

before Bloodworth was ever called over to the Court, and although Bost said that it made him remember the conversation that he had heard, he didn't think enough of it to go and report it to a proper official when he saw Bloodworth's name come out as a prospective juror, and he didn't report what he had heard to anyone. (R. 1333-1334). Also, Bost was in disagreement with the verdict, based on what he had read in the newspaper (R. 1337) and he made an affidavit about that matter for the purpose of helping the petitioner get a new trial (R. 1339).

The petitioner's witness Noah testified that in Clarke's poolroom after the petitioner was arrested and before he was indicted, Bloodworth said that he believed that the petitioner was guilty and he hoped that the petitioner burned for it. (R. 1344). Noah, too, was in disagreement with the jury's verdict (R. 1349) and, after the trial he went to see defense counsel without being requested to go, because he wanted to see justice done (R. 1350). Noah's said testimony was negatived by the State's witness Trulock who was in the pool game with Noah and Bloodworth at the time Noah claimed Bloodworth expressed said opinion as to the petitioner's guilt. (R. 1420-1435). [It is interesting to note Trulock's testimony that not only did Bloodworth express no opinion that the petitioner was guilty but that after Noah departed, Trulock, himself, asked Bloodworth what he thought of the North case and Bloodworth answered "Big'un, I wouldn't say either way. I would wait til twelve men decides the case and then I will talk after then." (R. 1422-1424)].

The petitioner's witness Davis testified that, about two weeks after Mrs. Albritton was buried, he was in the barber shop where Bloodworth worked and had heard Bloodworth say that the petitioner sure as hell killed that woman but would never be convicted (R. 1368).

Davis had a doubt in his mind about whether the petitioner was guilty (R. 1379). After the jury was drawn, Davis knew from reading the papers that Bloodworth was on the jury (R. 1369). Nevertheless Davis didn't tell anyone about hearing Bloodworth make such a statement until he talked to defense counsel, Haynsworth, the Saturday before the hearing on the motion for a new trial except that he did tell one man named Tibado (R. 1377-1378).

The petitioner's witness Bolden testified that, in the barber shop (R. 1385), before the petitioner was indicted, he asked Bloodworth what the latter thought of the case and Bloodworth answered that he thought North was guilty (R. 1386).

The petitioner's witness Grant testified that, after the petitioner was arrested but before he was indicted, Grant was in the cafe and heard Bloodworth say that he couldn't serve on the jury because he believed that North was guilty, that the son-of-a-gun was guilty, and that all of the people in Polk County couldn't change his, Bloodworth's mind (R. 1409-1410).

The juror Bloodworth testified that he didn't remember ever having expressed an opinion, a fixed opinion, as to the petitioner's guilt or innocence at any time before he was sworn as a juror in the case; that he had no fixed opinion that he could express (R. 1440); that he knew none of the facts of the case before he was sworn as a juror except what little casual reading he did from the newspapers and just general gossip (R. 1440); that at the time he was examined at the trial, he was not conscious of ever having formed or expressed an opinion as to the petitioner's guilt or innocence; that, when he was examined at the trial, he absolutely had a fair and impartial mind; that "my mind was open when I took the stand

here and the oath. I told the truth. That my mind was open. That the State would have to prove to my knowledge before I would deem him guilty." (R. 1443-1444).

Bloodworth testified that he didn't remember stating in front of the petitioner's witness, Bost, that he thought the petitioner was guilty (R. 1449); that he didn't recall having any conversation with the petitioner's witness Noah about the case (R. 1441), and that he didn't remember having said to Noah or anybody, that he believed that the petitioner was guilty and hoped he burned for it (R. 1444); that he didn't have any conversation that he remembered in which he expressed an opinion as to the petitioner's guilt or innocence in the presence of the petitioner's witness Davis (R. 1442); that he positively had never made the statement that he remembered that the petitioner sure as hell killed that woman but never would get convicted (R. 1442); that he didn't remember ever having made the statement to the petitioner's witness Grant or to anyone in the Cafe or ever, that he couldn't serve on the jury because he believed the petitioner was guilty and all the people in Polk County couldn't change it (R. 1443).

Bloodworth testified that he didn't remember agreeing with his customers if they said they thought the petitioner was guilty but that it was possible that he might have done so; that he talked to a lot of people who came into the shop every week, and the people were continuously discussing the case there around him when he cut their hair (R. 1449).

ARGUMENT

AS TO POINT ONE, CONCERNING PREACHER JONES AND THE JURY.

The rule governing such matters is set out in the annotation in 22 A.L.R. 254, et seq., under the heading "Communications Between Jurors and Others as Ground for New Trial or Reversal in a Criminal Case". We quote from page 255 of said annotation as follows:

> "While there are some cases in which great strictness has been observed, the rule sustained by the great weight of authority is that a verdict will not be disturbed because of a conversation between a juror and a stranger, where it was not prompted by a party, and it does not appear that any injustice was done to accused; or, at least if it appears that he was not prejudiced."

To the same effect is the annotation in 62 A.L.R. 1466.

The only case cited by the petitioner below in his brief before the Supreme Court of Florida which dealt with communications between jurors and outsiders was Shaw v. State, Ga., 9 S.E. 768.

The case at bar is completely different from the Shaw case. Here, the jurors had permission to attend church. Here the preacher was not a witness for the State, and did not help select the jury, and was not an active prosecutor, and had no interest in the case, and was not the pastor of any of the jurors, but was known to only one juror, who had heard him preach twice but had never met him personally.

Even a casual reading of the Shaw case, which was the only authority cited to the Supreme Court of Florida for the proposition there advanced and now advanced

here shows that the Shaw case and the present case are absolutely incongruous.

This proposition has never been before this Court. However, the problem has been presented to the courts of last resort in several jurisdictions and none of these courts under similar circumstances, have held that the basic rights of the defendant were prejudiced.

In State v. Kinsauls, (N.C.) 36 S.E. 31, the jurors were allowed to attend church with the consent of the defendant. The preacher spoke and prayed about the case. The Supreme Court of North Carolina disapproved the practice of permitting jurors to attend church but affirmed the conviction finding nothing prejudicial about what the preacher said. We quote briefly from that case as follows:

> "The matter complained of is as stated in Ex parte affidavits for the defense, the minister said 'there are men here who have in their hands the life of a poor man now on trial. You ought to be careful, and if he is guilty, say so; and if he is not guilty, say so. Do your duty before God and your country;' and in his prayer he said 'Now, Lord, we are going to offer a special petition to Thee that this jury may give him a fair and impartial trial, and, if guilty, say so and, if not guilty, say so,' and made a special appeal to God in behalf of said prisoner, praying for a 'fair trial to him.' It would have been, of course, propriety for a man of God to have made no reference to a matter which the laws of his country had entrusted to the unbiased decision of the jury, but it is impossible to find in the above anything which is prejudicial to the prisoner. In view of the occurrence, it would be well, however, for trial justices to hereafter avoid giving similar opportunity for complaint."

BLEED THROUGH POOR COPY

Even if the trial judge in the case at bar had found preacher Jones had prayed for divine guidance for the jurors in their duties, such a prayer would have been no more prejudicial than what the preacher said in his talk and prayer in the said Kinsauls case, supra.

In State v. Pancoast, (N.D.), 67 N.W. 1052, the jury attended church with the permission of counsel for both sides. In affirming the Supreme Court of North Dakota held almost exactly what the Supreme Court of North Carolina held in the Kinsauls case.

In Chilton v. Commonwealth, (Ken.) 186 S.W. 191, the jurors went to a religious revival. The Kentucky Court of Appeals found nothing prejudicial in what was done or said and affirmed.

The facts in the Chilton case, show a much stronger statement by the minister than we have in the instant case. Yet the Kentucky court found that it was not prejudicial.

It will be noted that in the Chilton case, the Kentucky court said that there might be merit to the claim of prejudice if the minister had made any improper reference (1) to the facts of the case or (2) to the duty of the jury under the circumstances. In the case at bar, the preacher made no improper reference at all; he didn't mention the facts of the case; he made no comment on the jury's duty under the circumstances, and he didn't hint what their duty was (the most that anybody said he did was ask divine guidance for the jurors in their duties, without any suggestion as to the direction in which their duty should lead them).

In Morgan v. U.S., (C.C.A. 7th), 31 Fed. 2d 385, the jury retired to consider its verdict. Then, at the

request of a juror, a Catholic priest was permitted to go into a separate room, shut off from the jurors and from the bailiff, and give communion to said juror. In affirming, the circuit court of appeals said:

> "While the action of the bailiff in permitting this to be done was reprehensible, a violation of his oath as bailiff, and cannot be too severely condemned, we are not able to see how it in any way influenced the jury in their deliberations or affected the verdict returned."

So it is that (1) under the governing law, communications between jurors and preachers do not constitute reversible error when the defendant is not prejudiced thereby; and (2) the evidence shows that nothing was said or done by the preacher involved in the case at bar which prejudiced or could have prejudiced the petitioner.

The petitioner here apparently takes the position that the harm that was done was not the harm which would have caused the jury to bring in a first degree murder conviction, but the harm that was done which might have prevented the jury from recommending mercy. Of course, we submit that there is absolutely nothing in the record to show that the innocuous remarks which had no effect on the jury according to the jury itself, would probably so have affected the jury. Furthermore, as Mr. Justice Mathews who prepared the opinion in the instant case for the Supreme Court of Florida so ably pointed out, at page 100 of the Southern Reporter, containing the opinion (65 So.2d):

> "In this case there was not one single extenuating circumstance to justify a jury in recommending mercy. The appellant was either guilty or he was not guilty. The jury found that he was guilty.

> If this finding by the jury was correct, then a most horrible, inexcusable, premeditated and heinous murder was committed. If harmless error did not influence the jury in determining the guilt of the appellant, then it could not influence it in recommending mercy. When they made the first determination that the appellant was guilty of murder the record shows no extenuating circumstance to justify a recommendation of mercy. When this woman was being murdered, there was no one present to plead mercy in her behalf."

AS TO POINT TWO, CONCERNING THE ALLEGED BIAS OF JUROR BLOODWORTH.

After hearing the testimony of the many witnesses, in the full and open and extensive examination of this question, the trial judge denied the motion for new trial, which operated as a finding against the petitioner's contention that Bloodworth had, prior to the trial, expressed opinions that petitioner was guilty and operated as a finding that Bloodworth was a fair and impartial juror.

The judge's denial of the motion for new trial indicates that he didn't believe the petitioner's witnesses. He saw them, observed their demeanor, and heard them testify. He may well have known them personally. He was in the best position to judge of their credibility. He had the right to disbelieve them.

In addition, the judge had the right to believe Bloodworth's testimony that he didn't remember having made the expressions of opinion attributed to him, and had the right to believe that Bloodworth would have remembered it if he had made said expressions of opinions.

Bloodsworth's testimony that he didn't remember making the expressions of opinion attributed to him was

a sufficient basis for the judge to find Bloodworth didn't make the said expressions of opinion, even though Bloodworth didn't positively deny making them. The case of Irvin v. State, 19 Fla. 872, is in point.

In that case, a motion for new trial supported by affidavits, charged that, previous to the trial, a juror had expressed an opinion as to the guilt of the defendant and had said that if he was on the jury he would hang the defendant. The State presented the juror's affidavit which said that he had had "no recollection of having used the expressions as charged in the several affidavits presented by the defendant on the motion," and that, when he was sworn as a juror he had no opinion as to the innocence or guilt of the accused. The Florida Court approved the sufficiency of the juror's affidavit, despite the fact that he did not positively deny having made the statement which was attributed to him. The court said:

> "Aside from these considerations, Coburn by his affidavit, sets the question at rest. He has no recollection of having used expressions as charged in several affidavits presented by the defendant on the motion. He says he had not informed himself of the circumstances of the killing, that he was sworn as a juror, he had no existing or formed opinion as to the guilt or innocence of the accursed, was absolutely without any previously-formed opinion, without bias or prejudice for the accused. He thus shows himself qualified as a juror when he was sworn."

Bloodworth's testimony in the case at bar was as positive and full as was the juror's affidavit in the Irvin case.

Lamb v. State, 90 Fla. 844, 107 So. 530, is also in

BLEED THROUGH POOR COPY

point. In that case, the juror Fulwood was charged in two affidavits with having formed an expressed opinion as to the defendant's guilt. Fulwood testified that he "had no recollection of ever having formed or expressed any opinion to anyone as to his (the defendant's) guilt or innocence." The trial court held that Fulwood and Stevens (another juror whose impartiality was attacked) were qualified jurors. The Supreme Court of Florida affirmed, pointing out that on the bare record the evidence of the disqualification of either Fulwood or Stevens was not at all convincing, and also saying: "The trial court, after hearing and observing the witnesses in support of their alleged disqualifications, pronounced them qualified, and we think such questions must necessarily be left to the trial judge, who has opportunity to know the witnesses and judge of their credibility. Irvin v. State, 19 Fla. 872; Yates v. State, 7 So. 884, 26, Fla. 484; People v. Taing, 53 Cal. 602; People v. Vasquez, 49 Cal. 560."

In addition we quote from Crosby v. State, 90 Fla. 381, 106 So. 741:

> "After verdict, all presumptions of law are in favor of the juror's competency, and the burden of proof is upon one who attacks it. McGowan v. State, 102 So. 890."

In the opinion of the trial judge, who had opportunity to know the witnesses and judge their credibility, the petitioner did not overthrow the presumptions of law that Bloodworth was a qualified juror, and did not carry his burden of sustaining his attack upon Bloodworth's competency as a juror. We submit that said finding should not be overthrown by this Court, which did not see and hear the witnesses testify and has no opportunity to know them and judge their credibility.

The petitioner cites the cases of Niemotko v. Maryland, 340 U.S. 268, and Feiner v. New York, 340 U.S. 315, as authority for the proposition that this Court should set aside the findings of fact of the trial court as affirmed by the Supreme Court of Florida.

These cases are clearly not in point. For as you pointed out in those cases there was *nothing* in those records upon which to base the findings of fact of the tribunals below.

AS TO POINT THREE, CONCERNING THE NEWSPAPER ARTICLE.

As shown in the statement of the case in behalf of respondent, the petitioner was accorded full opportunity to examine every juror with respect to the said newspaper article, with the understanding that the judge would excuse any and every juror who might be shown by such examination to have read said article and to have become biased or prejudiced against the petitioner by reason of having read it.

The petitioner resolutely abstained from availing himself of this opportunity; he did not ask a single juror about the newspaper article (R. 253-326).

The result is that the petitioner wishes this court (1) to presume that some or all twelve jurors who tried him read said newspaper article, and (2) to pile up on that presumption the further presumption that the reading thereof biased and prejudiced such juror against the petitioner. We can't conceive of this Court doing any such thing. It was the petitioner's burden to make facts appear which show injury. He has made no effort to carry that burden.

In order to constitute a denial of due process "the acts complained of must be of such quality as *necessarily* prevent a fair trial." Lisenba v. California, 314 U.S. 219, 86 L. ed. 166, 180. Here the mere act of the Tampa Tribune in the publishing of the newspaper article (and that is all that the record shows happened) did not necessarily or even probably prevent a fair trial.

The petitioner's brief mentions the publicity given the case before the trial. If he had any complaint on that score he should have made it before entering upon the selection of trial jurors, as required by statutes. See Sections 911.03 and 916.03, Florida Statutes.

The petitioner's brief mentions publicity during the trial. The record shows nothing of the extent or nature of that publicity. Nor does the record show that any of this publicity reached any of the trial jurors.

The petitioner says that, upon said Tampa Tribune article being brought to the attention of the Court, the Court should have ordered the continuance sua sponte.

Why should the Court have ordered the continuance? No reason appears to justify such action. It wasn't shown that any of the venire men had ever read the article, much less become biased by it. The record shows no excitement among the populace or any other reason for delay.

Only 37 venire men were examined on voir dire before a jury of twelve men were accepted by both sides. (R. 60-326). Here is what happened to those 37 venire men:

Peremptorily challenged by state	5
Peremptorily challenged by petitioner	7

Excused because opposed to capital punishment	3
Excused because opposed to bringing in death verdict on circumstantial evidence	1
Excused by mutual consent	1
Excused because of relationship to deceased	1
Excused because of bad health	1
Excused because of bias, prejudice or fixed opinion	5
Excused, reason not clear	1
Sat on trial jury	12
Total	37

This shows clearly that there was no reason for a continuance in this case.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

RICHARD W. ERVIN
Attorney General
State of Florida
Tallahassee, Florida

REEVES BOWEN
Assistant Attorney General
Tallahassee, Florida

BART L. COHEN
Assistant Attorney General
Tallahassee, Florida

Attorneys for Respondent

BLEED THROUGH POOR COPY